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Journal of the Society of Comparative Legislation. Vol. I, No. 1, August, 1896; No. 2, March, 1897. Printed for the Society by Rivington, Percival & Co., London. — 8vo, xxxii, 422 pp.

Jahrbuch der Internationalen Vereinigung für vergleichende Rechtswissenschaft und Volkswirtschaftslehre zu Berlin. I. Jahrgang, 1. & 2. Abtheilung, 1895; II. Jahrgang, 1896. Berlin, Hermann Bahr's Buchhandlung (K. Hoffmann), 1895-97. — 8vo, 652, 716 pp.

Questions concerning the Law Customs of the African Natives. Submitted by the International Association for Comparative Jurisprudence and Political Economy of Berlin. [No imprint or date.] — Folio, 8 pp.

Der Staatsbankerott und die moderne Rechtswissenschaft. Vortrag gehalten in der Internationalen Vereinigung für vergleichende Rechtswissenschaft und Volkswirtschaftslehre zu Berlin. Von DR. FR. MEILI, ord. Professor an der Universität Zürich. Berlin, Puttkammer & Mühlbrecht, 1895. — 8vo, iv, 82 pp.

In 1894 steps were taken, first in Berlin, later in London, for the organization of societies of comparative jurisprudence. In both cases the efforts were successful. By 1897 the London Society of Comparative Legislation had obtained nearly two hundred members, and the International Association for Comparative Jurisprudence and Political Economy of Berlin nearly six hundred. Each body has now published one or more substantial volumes; and from these the character of the work likely to be accomplished by each may be fairly estimated. It is of interest to compare the aims and work of each of these new associations, not only with the other but with the older French Society of Comparative Legislation, and to see how far these three organizations are doing the same work and how far they are tending to differentiate from and supplement one another.

The field of comparative jurisprudence is broad enough for a dozen such societies to labor side by side without interference. The comparative method may be applied to the study of legal history, transforming that branch of legal science into a study of the evolution of all human law. So far nearly all the work along this line, whether associated with ethnology or with jurisprudence, has been confined to early law — to that period which the Germans call *Volksrecht*. The excellent Austrian *Zeitschrift für vergleichende Rechtswissenschaft* is chiefly devoted to this period. Little has been

done for the following period — that period which Maine designates as “fiction” and which the Germans, in apter phrase, call *Juristenrecht*. For the next period, that of “equity” or *Amtsrecht*, when government, in the form of prætor, king or chancellor, overrides established law with commands and prohibitions based on administrative power, comparative work is almost entirely wanting. It is only when we reach the period of “legislation” that we again find the comparative method actively employed.

In the comparative study of legal history there is opportunity for further differentiation. Special stress may be laid upon public law or upon private law. One special branch of property law, the law merchant, has already proved peculiarly attractive to students of the historical-comparative school by reason of its cosmopolitan development. International law, of course, cannot be studied from any other than a cosmopolitan point of view.

In the comparative study of law in its latest developments — in the study of comparative legislation — differentiation is possible by subjects, as indicated above, or as a result of the different aims with which the study is prosecuted. Modern laws may be regarded as links in that chain of development whose beginnings have faded from the memory of our race and whose end we cannot foresee; and the investigator may concern himself mainly with the causes and effects of legal change. Again, the point of view may be less sociological and more juristic, and the effort may be to ascertain how far the rules established by modern legislation modify the traditional theories of legal dogmatics. Again, the point of view may be less scientific and more practical. Before university professors or learned societies occupied themselves with the comparison of laws, and long before the term comparative legislation was coined, men who had laws to make studied the laws existing among divers peoples. Something of the sort was going on two centuries before Christ, when the edict of the Foreign Prætor took shape at Rome; something of the sort has been going on in our own time in the British Empire, with its analogous variety of local and racial customs and laws. In modern Europe important legislation is regularly preceded by a ministerial or parliamentary investigation of the laws made in other countries *in simili casu*. The reports of English parliamentary commissions are often valuable studies in comparative legislation; and the “Motives” which accompanied the first draft of the German civil code constitute one of the most important modern contributions to comparative jurisprudence.

From the outset the aims and the labors of the French society have been practical: working in touch with and aided by the French government, it publishes, in French, the most important foreign laws of each year. It publishes also a smaller *Annuaire* of French legislation. It is publishing a series of French translations of foreign codes. At its monthly meetings papers are read which are sometimes mere notices of legislative action in this or that country, sometimes elaborate studies in the comparative law of special subjects. These papers are printed in the *Bulletins* of the society. The *Annales* and the *Bulletins* have long been indispensable to the student of comparative legislation.

The English society is attempting a more intensive cultivation of the field of English legislation. This field is certainly wide enough for its energies. As was pointed out in its prospectus, in 1895, the English race and the races living under English rule have about one hundred and ten legislatures — sixty in the British Empire and fifty in the United States. The acts of these legislatures need not be translated, for they are nearly all promulgated in English. (It appears that the laws of Jersey are published in French only.) They need not be republished, for they are all obtainable, with more or less trouble. What is needed is something in the nature of a guide to the various channels of this enormous stream of legislation. Such a guide the *Journal* of the society aims to supply. In its first number, that of August, 1896, it gives a review of the legislation of the British Empire in 1895. This review covers, in 133 pages, the work of no less than fifty legislatures. It represents the coöperation of ten editors and correspondents. Such an achievement in the first number of the *Journal* implies a thoroughness of preliminary organization which inspires confidence in the future work of the society. The "notes" on American legislation in the same number are readable, but thin. They are based on Dewey's *Bulletin of Legislation*. Perhaps they may be taken as a hint that we Americans should do for ourselves what the London society is doing for the British Empire.

Another evidence of careful preparation is furnished by the articles in the first and second numbers on "Modes of Legislation in the British Colonies." This is the beginning of an elaborate inquest not merely into modes of legislation, but into the existing law of all the colonies. A carefully framed series of questions has been drafted by the officers of the society and has been transmitted by Mr. Chamberlain, secretary of state for the colonies, to the respec-

tive colonial governments. It is inquired, among other things, what is the existing common law of each colony; whether special law exists for particular races or creeds; in what form the statutory law is published; and what steps, if any, have been taken towards revision of statutes or toward codification. Answers from eighteen colonies have thus far been published. These are interesting reading; and the full set of answers will be most valuable. Articles throwing light on the same general question, namely, the existing law of the British Empire, are contributed to the first number by Sir Courtenay Ilbert and Mr. L. B. Clarence, who write on the application of European law to the natives of India and of Ceylon.

Another inquest into "Methods of Legal Remuneration in Contentious Matters" has been set on foot by Mr. John Macdonell, and the results are given in an article of 137 pages in the second number. Inquiries were addressed to, and answers received from, competent authorities, not merely in the British colonies and in five representative commonwealths of the United States, but in ten of the leading countries of Continental Europe.

Other special articles deal with the new German civil code and with the recent controversy in Egypt concerning the payment of the expenses of the Dongola expedition. Under a strict construction of the term "comparative legislation," it would be difficult to defend the admission of either of these articles. Under a broader construction, any information regarding foreign law or foreign judicial decisions may be welcomed as "material."

"Comparative jurisprudence and political economy" is a broader title, and in assuming it the Berlin association stakes out a broader field than that which either the French or the English society attempts to occupy. Even this broad title, however, fails to justify the insertion of several articles published in the first *Year-Book*, because the element of comparison is wanting. Were we to judge the enterprise by this volume alone, it might be queried whether any useful purpose was subserved, in a country so abundantly supplied with technical periodicals, by collecting in a new journal articles that might as well be published in the existing journals devoted to law or to economics. In the second number of the first volume, however, there is a marked improvement, not in the leading articles indeed, but in the addresses (*Vorträge*) delivered before the association. These are really comparative. In the second *Year-Book* there is even more improvement. All the leading articles save one are comparative. In both volumes the articles, with few exceptions,

are of real value to the student of jurisprudence. In the introductory article by Professor Bernhöft, the association takes formal possession of the entire field of comparative jurisprudence, but announces that more attention will be paid to modern problems than to legal history. The article further emphasizes the intimate connection between law, ethics and economics; and declares that on this triple basis only can we properly estimate the trend of things in the present period of social restlessness and conflict. In the field of legal history the most noteworthy contributions are Professor Wernitsch's article on "The Collective Liability of the Village for Crime in Ancient and Modern Servian Law" (vol. i, p. 14), in which it is shown that the individualistic rules which obtain in Western Europe are inapplicable to Servian conditions; and Professor Jolly's article on the ceremonies attending the attainment of puberty in India, which he compares with those practiced by other Indo-European peoples (vol. ii, p. 575). Excellent studies in comparative law and economics are contributed by Dr. Hirsch, who writes on the trade-unions of Great Britain and of Germany (vol. i, p. 513); by Professor Foinitzky, who discusses the Russian draft criminal code from the comparative point of view (vol. i, p. 588); by Dr. Burchard, who treats of the modern law of salvage; by Dr. Heilborn, who discusses jurisdiction over merchant-ships in foreign waters and pleads for the subsidiary application of the law of the flag (vol. ii, p. 1); and by Professor Lehmann, who examines the English, Dutch and German laws respecting colonial companies, criticising the German legislation (vol. ii, p. 20). Suggestive articles concerning the exchange of governmental publications are contributed by Professor Meili (vol. i, p. 25), whose manuscript should have been edited into one-third of its bulk, and by Dr. Maas (vol. ii, p. 122). Of particular interest to Americans is Dr. Kaufmann's temperate and judicial article on "The Bering Sea Fisheries controversy and the Paris Arbitration of 1893" (vol. i, p. 459). Dr. Kaufmann thinks that the decision of the tribunal was justified by existing international law, but that the American contention represents the law of the future.

Like the English society, the German association is making no attempt to duplicate the work of the French society in collecting and publishing texts. Like the English society, it confines itself to sketching the progress of legislation in various countries. Unlike the English society, it aims to follow the movement of legislation everywhere, and to include the development of legal literature. In the first volume this department was quite inadequate. In the

second there is a great improvement. Reports are published from twenty-eight countries, and the review fills 424 pages. Particularly good relations appear to have been established with the Slavic states of southeastern Europe, and the *Year-books* promise to give far more information regarding Slavic law than is elsewhere easily obtainable.

Another department which is most inadequately represented is that of judicial decision. A few interesting cases are reported in each volume. They are, for the most part, cases of conflict of laws. It seems hardly worth while, however, for the editors to make any especial effort to strengthen this department, which is already covered by the admirable *Journal de droit international privé*.

Like the English society, again, the German association has started an inquest, but in a very different field. A committee has been created to investigate the legal customs of the natives of Africa, and a list of questions covering eight folio pages has been printed in German and in English. The questions are well chosen, and are so framed as to make clear, even to persons unfamiliar with ethnological investigations, the precise points on which information is desired. These papers are to be sent to colonial officials, missionaries, traders and explorers, and the results secured should be valuable.

It should be noted, finally, that by the assistance of the German Imperial Foreign Office and of the German Colonial Society, the Berlin association is enabled to offer a prize of 1600 marks for the best treatise on "the principles which have been observed in the colonies of the most important states regarding acquisition and settlement of land, and the economic result of the same." Manuscripts may be written in French, German or English, and must be sent in before April 1, 1898. For the further conditions of the competition see the *Jahrbuch*, vol. ii, p. 714 *et seq.*

Not all the addresses delivered before the Berlin association find their way into the *Year-Book*. Professor Meili's treatise on *State Bankruptcy* comes to us as a separate publication. The pamphlet deals with the relation of foreign creditors to states which borrow and fail to repay. There is here, the author insists, a perfect legal right against the defaulting state — only it cannot be enforced. (Professor Meili's conception of a legal right, it will be observed, is not that of the Positivists.) In earlier theory, the creditor's state was entitled to enforce this right against individual members of the defaulting state, by seizure of their property or attachment of their claims. This course was justified, at first, on the theory that every

subject of a state, by reason of his allegiance, was subsidiarily responsible for all the acts and defaults of his state (Grotius); later, on the theory of legitimate reprisal (Puffendorf). In modern times the theory that property rights are human, not civil, rights has caused these remedies to fall into desuetude. There remains nothing but state action in behalf of creditors against the defaulting state itself, by seizure and administration of its territory and revenues; and this remedy is actually resorted to only as against weak and half-civilized communities. Meili argues for an international court which shall be empowered to investigate the claims of creditors and the resources of defaulting states, and to decree, in any needful case, such measures as the great European states have taken in the case of Egypt. That such a court can at present be established he does not assert; but he thinks that the way may be paved for its eventual establishment by special arbitration conventions. From every state that borrows, the lenders should exact a pledge that in case of default, the state will submit to the decrees of a tribunal of arbitration. How the decrees of the arbiters are to be enforced he thinks it needless to discuss, since no instance has yet occurred in which a state has consented to arbitration and has then refused to abide by the decision.

It is evident that both of the new societies whose work we have been examining deserve support from all who are interested in comparative jurisprudence. Their publications will be indispensable to the student, and should find a place in every important university library and law library in the United States. In the list of members of the English society there seem to be, at present, but two American universities — Columbia and Michigan. Applications for membership in the English society may be addressed to Albert Gray, Esq., 2 Paper Buildings, Temple, London, E.C. Applications for membership in the Berlin society may be sent to Dr. F. Meyer, W. Lützow Ufer, 32. The annual subscription to the English society is a guinea; to the German association, twelve marks.

MUNROE SMITH.

The English Constitution. A Commentary on its Nature and Growth. By JESSE MACY, M. A., Professor of Political Science in Iowa College. New York, The Macmillan Co., 1897. — 534 pp.

This book consists of two parts. The first contains an exposition, compressed within the limits of one hundred pages, of the English constitution as it is at present. The second part is a commentary